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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 612

EDWARD SPEICE,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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To The Honorable, The Chief Justice and the Associated Justices of the Supreme Court of the United States.

Petitioner, Edward Speice, respectfully prays for a writ of certiorari to the Supreme Court of Illinois in order to review its judgment affirming a judgment of conviction in the Criminal Court of Cook County, Illinois judging the petitioner guilty of burglary and sentencing him to ten to fifteen years imprisonment.

OPINIONS BELOW

The trial court delivered no written opinion upon the rendering of judgment nor at time of sentencing. The trial court merely denied the motion to suppress the evidence after a hearing. (Abst. 8)

This case turns on the question of the admissibility of evidence which the petitioner claims was illegally seized in violation of his constitutional rights.

The judgment of the Supreme Court of Illinois was rendered on September 22, 1961 and appears at pp. 5 to 9 of the Record and at pp. 15 to 21 of the Appendix. The case is reported in 23 Ill. 2d. 40.

GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

1. The date of the judgment sought to be reviewed and the time of its entry is September 22, 1961 (R. 10). This petition for certiorari is filed within ninety days of said judgment by the Supreme Court of Illinois.

2. This court's jurisdiction is invoked under 28 U.S.C. 1257(3) and Rule 22(1) of the rules of this court.

QUESTIONS PRESENTED FOR REVIEW

1. Where a State, by its legal decisions, follows the federal "exclusionary rule" as to the admissibility of illegally obtained evidence, do the decisions of this Court as to whether evidence obtained in violation of the Fourth and Fourteenth Amendments control on the question of whether the evidence is illegally obtained? Or may a State, consistent with the right of privacy guarantee of the due process clause of the Fourteenth Amendment, hold to be not violative of the United States Constitution conduct which this Court has declared to be violative thereof?

2. Does a conviction by a State court for a State offense deny the "due process of law" required by the Fourteenth Amendment, when evidence which was admitted at the trial was obtained under circumstances which would have rendered it inadmissible at a prosecution for violation of federal laws in the courts of the United States, because there deemed to be an infraction of the Fourth Amendment, as applied in *Weeks* v. *United States*, 232 U.S. 383 and *Amos* v. *United States*, 255 U.S. 313?

3. Is a midnight search and seizure in the home of the defendant lawful where it appears that at the time of the entry by a number of police the defendant was absent, the entry by the police was made upon their confrontation of the defendant's wife who was home alone with her child, and no search warrant or warrant for the arrest of the defendant was in existence at the time of the entry? May the State sanction a midnight invasion of a citizen's dwelling place, absent that citizen's invitation, where the police officers testified that the wife invited them to come into the apartment out of the hallway and where the wife denied that she made such invitation? Even if such invitation by the wife were given under the circumstances of the officers presenting themselves to her at midnight outside her dwelling, is not such "invitation" the result of that degree of implied coercion held to be violative of the Fourth Amendment to the Constitution in *Amos* v. *United States*, 255 U.S. 313 and therefore condemned?

4. May the State ignore this Court's holding in *Amos* v. *United States*, 255 U.S. 313 and hold that the wife may waive her husband's constitutional immunity and consent to the search of the husband's premises? Even presuming she gave such consent which she denied.

5. May the State hold that in a conflict of testimony between police officers demanding entry into a home at midnight and who testified that consent was granted by the

wife and the testimony of the wife who gave evidence that she submitted to lawful authority but did not give consent to search the dwelling, the difference in testimony must be resolved against the wife in the face of common experience and in the face of the holding by this court in *Amos* v. *United States*, 255 U.S. 313, that such consent of the wife could not be freely given, but was the result of implied coercion brought about by the presence of the police officers?

6. Since the Fourth Amendment's right of privacy has been declared enforceable against the states through the due process clause of the Fourteenth Amendment, *Mapp* v. *Ohio*, 367 U.S. 643, 6 L. Ed. 2d 1081, can the admittance into evidence in a state trial, where the evidence was seized upon the midnight entry by police officers into the home of the petitioner when only his wife and child were present, be allowed to stand in derogation of the strong pronouncement by this court in *Amos* v. *United States*, 255 U.S. 313?

7. May the State ignore the constitutional immunity from an illegal search where police officers had no search or arrest warrant, had no probable cause to obtain a search warrant, and had no probable cause to enter a dwelling home without a search warrant contrary to the holdings in *Johnson* v. *United States*, 333 U.S. 10 and *Jones* v. *United States*, 357 U.S. 493?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. Fourth Amendment to the Constitution of the United States.

2. Fourteenth Amendment to the Constitution of the United States.

3. Article 2, Section 6 of the Constitution of the State of Illinois, 1870.

The pertinent provisions appear in the Appendix hereto.

STATEMENT OF THE CASE.

How The Federal Question Was Raised.

A. In the Trial Court.

Prior to his trial for burglary, the petitioner filed his motion to suppress the evidence. (Abst. 4). In his motion, petitioner raised the point that police officers entered his home in his absence without a search warrant and illegally seized certain items of personal property which were intended to be introduced against him at his trial. After evidence was taken, the trial court denied the motion to suppress the evidence. (Abst. 8).

At the time of the trial, petitioner objected to the introduction into evidence of the items of personal property he unsuccessfully sought to have suppressed at the preliminary hearing. (Abst. 17).

B. In the Court Below.

The petitioner presented as error to the Supreme Court of Illinois the fact that his motion to suppress the evidence was denied by the trial court and he claimed a violation of his constitutional rights, both state and federal. (App. 22).

The Supreme Court of Illinois found against petitioner's arguments (App. 15-21) and specifically found that *Amos* v. *United States*, 255 U.S. 313 is not to be followed by this State, for *Amos* "... would have the effect of taking from the trial judge the right to pass upon the credibility of the testimony and would require us to hold that in the event of a conflict in the testimony as to whether consent was given we must decide that the consent was not freely given." (App. 18)

The error relied on relates to the denial of the motion to suppress the evidence and to the refusal by the Supreme Court of Illinois *People* v. *Speice*, 23 Ill. 2d 40, to follow the ruling of this court in *Amos* v. *United States*, 225 U.S. 313.

STATEMENT OF FACTS IN CONNECTION WITH THE MOTION TO SUPPRESS THE EVIDENCE

The salient facts produced on the hearing to suppress the evidence are as follows:

The defendant, Speice, testified that on September 26, 1959, between 11:00 P.M. and midnight, he was a passenger in an automobile which Theodore Kotwasinski was driving. As the car was being parked in front of his home at 2453 Berteau, Chicago, police officers arrested him. He asked the officers if they had a warrant and they said they did not need one. The officers said, "Let's go in the house"; but defendant denied them permission to do so because they had no warrant for his arrest or for the search of his home. Nonetheless, the officers held him with a shotgun and took him to his house. Upon entering the officers pushed him down on a couch and proceeded to search the house against his wishes. He lived in the house with his wife, son and sister-in-law. He gave no permission to search his premises. (Abst. 4).

Whereupon, the petitioner rested.

On behalf of the State, police officer John Willems testified (Abst. 4-6) that on September 26, 1959, at approximately 10:45 P.M., he was at detective headquarters and received an anonymous telephone call from a woman who stated, "You wish to get two guys with some hot property? Well, there are two fellows who took in some property at 2453 W. Berteau earlier that evening." She knew one as Eddie Speice and the other as Red. She said, "If you want to get these guys, you had better get over here real fast." She described the car in which they were riding as a 1950 or '51 grey Plymouth Sedan. Then he and two other officers went to 2453 Berteau at about 11:20 P.M. He rang the bell, heard a woman's voice say, "Who is it?"

He stated it was the police and she opened the door. He had a conversation with her at the doorway; he asked Mrs. Speice if her husband was home and she stated he was not, but that she was expecting him. She asked the officers to come in and not stand in the hallway. The witness asked her if her husband had brought in any property earlier and she said he had, and she asked if the officers would like to see the property. They went to a bedroom, and Mrs. Speice stated that the property was brought in by her husband and Red at about 10:30 that evening. He saw three portable piano-organs, a portable television set, a brown attache case and an electric welding outfit.

The three officers then left the house and parked their car a half block west of the residence. At about 2:10 A.M. they saw a 1951 grey Plymouth Sedan preparing to park on Berteau. They drove up to the car, announced they were police and placed both men under arrest. Defendant and Kotwasinski were handcuffed, and the witness told them they were going to the apartment. In the apartment, they advised Mrs. Speice her husband was under arrest. They asked Speice where the articles were and Speice pointed to a bedroom which was the same bedroom the officers had been in previously. The other officers brought the articles into the living room.

Upon cross-examination, officer Willems stated the anonymous woman caller refused to identify herself. During the time he was talking to the woman, he did not suggest to another officer that the call should be traced. After they left Speice's house, they waited approximately two hours for the car described to drive up to the house. (Abst. 7)

Whereupon, the State rested.

In rebuttal, Mrs. Patty Lou Speice testified she was petitioner's wife and that the officers rang her bell about 11:00 or 12:00 o'clock in the evening. They asked if Speice were there and she said he was not. They asked if they could come in and she said that they could; but then they left and asked if she knew where her husband was. When the officers returned a second time they had her husband and Kotwasinski in handcuffs. She did not have such conversation as officer Willems stated that she was angry at her husband for bringing in merchandise; and neither did she take the officer to a bedroom and point out the merchandise. Upon the second occasion of their return, they told her they had her husband in handcuffs, and, therefore, she admitted them into the house (Abst. 7).

Upon cross-examination she said Officers Willems and Rothgery came in to the apartment when they told her that her husband was handcuffed outside. The first time the officers were in the flat they were there about five minutes. She did not remember exactly what was said to the officers because she was upset that night when the officers walked in. The only time they asked about property in the apartment was when they had the defendant and the other fellow in the apartment. She was crying at the time. She told the police that Ted had a grey Plymouth but she was not sure of the year. When the officers came in the apartment the second time, her bell had rung and officer Blanchard said, "We have your husband and his friend outside". Then they all came in. She was very upset when the police were in the apartment. She had a divorce proceeding pending against the defendant at the time of this hearing (Abst. 7-8).

Whereupon, petitioner rested again.

STATEMENT OF FACTS UPON THE TRIAL OF THE CAUSE

The owner of a piano-organ store testified that on September 26, 1959 at about 5:00 o'clock he closed the windows and locked the doors and the next morning he returned to the store and observed the lock was broken and that three piano-organs and a portable television set were missing. He saw the items at 11:00 o'clock that morning at a police station (Abst. 9).

Police officer John Blanchard testified that pursuant to an investigation on September 26, 1959, he went to 2453 West Berteau Street, Chicago, rang the bell, identified himself as a police officer and was admitted by Mrs. Speice. Officer Willems and Rothgery were with him. After a search of the apartment they saw three piano-organs and a table television set (Abst. 9). They left the apartment, returned at about 11:45 P.M. and looked in the bedroom to see if the articles were still there. They left again and at about 2:00 o'clock in the morning he and the other officers went to a car which pulled up across the street from the apartment and arrested the defendant and another man (Abst. 10).

The three piano-organs and the television set were introduced into evidence over defense objections and the possession thereof constituted the sole evidence of burglary against the defendant (Abst. 47).

REASONS FOR GRANTING THE WRIT

Now that *Mapp* v. *Ohio*, 367 U.S. 643, 6 L. ed. 2d 1081 commands of the states that same degree of observance of the Fourth Amendment's immunity to citizens from illegal search and seizure which federal courts are required to observe the sanction of the Fourth and Fourteenth Amendments to the United States Constitution should be applied, because inadmissible evidence was obtained here in violation of the Federal Constitution. From the facts of this case it appears clear that the protection a citizen is entitled to under the right to privacy and the freedom against unreasonable searches and seizures was denied petitioner.

Illinois now refuses to follow *Amos* v. *United States*, 255 U.S. 313, notwithstanding that in 1931 in *People* v. *Lind*, 370 Ill. 133 it followed *Amos* precisely, on a set of facts similar to the one here in issue.

The Illinois court has sanctioned the invasion in the night time by three officers of a dwelling place rented by petitioner which house was occupied at the time of entry only by petitioner's wife and child (Abst. 5-7).

Petitioner's wife was "upset" (Abst. 7) and was "crying" (Abst. 8).

There was a dispute in the testimony over whether the three policemen confronting petitioner's wife at about midnight secured her permission to search the premises. She stated she gave no permission (Abst. 8). The officer stated she did (Abst. 4-6). The trial judge, hearing the conflicting evidence, chose to deny the motion to suppress (Abst. 8) and thereby believed the officer's testimony in contradiction to the testimony of petitioner's wife.

Under such circumstances, this Court ruled in 1921 in *Amos* v. *United States*, 255 U.S. 313, p. 317:

> "The contention that the constitutional rights of defendant were waived when his wife admitted to his home the government officers, who came, without warrant, demanding admission to make search of it under government authority, cannot be entertained. We need not consider whether it is possible for a wife, in the absence of her husband, thus to waive his constitutional rights, for it is perfectly clear that, under the implied coercion here presented, no such waiver was intended or effected."

Illinois now refuses to give sanction to this important pronouncement. For, as the opinion of the Illinois court states (App. 17-18):

> "The second alternative argued by the defendant in support of his contention that the search was illegal is that the consent of the wife was not freely given but was the result of an implied coercion on the part of the police officers. In support of this contention the defendant relied strongly upon *Amos* v. *United States*, 255 U.S. 313, 65 L. ed. 654, and *People* v. *Lind*, 370 Ill. 131. In these cases it was held that the circumstances showed that the consent of the wife was not freely given but was the result of implied coercion brought about by the presence of the police officers. In both of these cases there was a conflict in the testimony as to whether the wife in fact consented. The defendant points out that there is such a conflict in the present case and argues that because of this conflict in the testimony this case should be covered by *Lind* and *Amos* rather than *Shambley* and *Perroni*, for in the latter cases there was no conflict in the testimony as to the consent. This argument would have the effect of taking from the trial judge the right to pass upon the credibility of the testimony and would require us to hold that in the event of a conflict in the testimony as to whether consent was given we must

decide that the consent was not freely given. Such a contention is similar to that advanced by the defendant in *People* v. *Byrd*, 21 Ill. 2d 114 where it was argued that if there be any evidence that a confession is involuntary, the confession must not be admitted in evidence. We rejected that contention in the case and we reject defendant's contention herein. The question of whether consent was in fact given is a factual matter to be determined by the trial court and where the evidence is conflicting this court will accept the finding of the trial court unless it is clearly unreasonable."

Accordingly, Illinois refutes its own previous ruling on this point, *People* v. *Lind*, 370 Ill. 131 and refutes this Court's guiding and leading case, *Amos* v. *United States*.

Even before *Mapp* v. *Ohio*, 367 U.S. 643, 6 L. ed. 2d 1081 many states followed the holding in *Amos* on this important constitutional point. (See *State* v. *Lindway*, 131 Ohio St. 166; *Maupin* v. *State*, 260 Pac. (Okla.) 92; *Duncan* v. *Commonwealth*, 198 Ky. 841; *Tobin* v. *State*, 255 Pac. (Wyo.) 788; *Humes* v. *Taber*, (R.I. 464).

This question is discussed in 31 ALR 2d 1097 wherein it was stated:

> "There is clearly no effectual consent to a search and seizure which will bind an owner or the occupant of premises where another, in charge of the premises in his absence, is impliedly coerced to allow an officer to enter and make a search. Submission to lawful authority in such a case does not rise to the dignity of a consent" (Citing *Amos* and other federal cases together with the Illinois court's *Lind* case and cases from Indiana, Kentucky, Michigan, Missouri, Ohio, Oklahoma, Tennessee, Texas and Wyoming).

With unanimity the federal Courts of Appeals have followed *Amos* in cases where this precise question was

presented to those courts. *Higgins* v. *United States*, 209 F. 2d 819, D.C. Cir.; *Williams* v. *United States*, 263 F. 2d 487, D.C. Cir.; *Channel* v. *United States*, 285 F. 2d 271, 9th Cir.

Absent authority to search the dwelling by presenting the facts to a magistrate or judge and having a search warrant issued, the officers had no right to enter the dwelling house in the night time. In *Jones* v. *United States*, 357 U.S. 493, this court strongly condemned a search such as here, saying (pp. 497-8):

> "It is a settled doctrine that probable cause for belief that certain articles subject to seizure are in a dwelling cannot of itself justify a search without a warrant . . . The decisions of this court have time and again underscored the essential purposes of the Fourth Amendment to shield a citizen from unwarranted intrusion into his privacy."

Is the testimonial "fact" of permission, as testified to by the police officers to be given literal meaning or should not a reviewing court assess the milieu in which the so-called invitation to search is given? Is not the police-asserted "permission" really an invitation by submission to lawful authority?

As this Court said in *Rogers* v. *Richmond*, 365 U.S. 534, 5 L. ed. 2d 760, 769:

> "Of course, so-called facts and their constitutional significance may be so blended that they cannot be severed in consideration. And in any event, there must be a foundation in fact for the legal result. See *Thompson* v. *Louisville*, 362 U.S. 199, 4 L. ed. 2d, 654, 80 S. Ct. 624 . . . Historical facts 'found' in the perspective framed by an erroneous legal standard cannot plausibly be expected to furnish the basis for correct conclusions. . . ."

In 1961 Illinois has strangely departed from adherence to important constitutional principles—principles which it had adopted in 1931 in *People* v. *Lind*, 370 Ill. 131.

Illinois now has determined that it will not follow *Amos* which, prior to *Mapp* v. *Ohio*, was the guide for most of the state jurisdictions and for all of the federal courts. Now that *Mapp* v. *Ohio* governs State proceedings as here, will this court now sanction Illinois to revert to a non-observance of constitutional limitations upon police power where the tendency—both State and Federal—has been to enforce the constitutional immunities?

"A defendant has the right to be tried (by a State) according to the substantive and procedural due process requirements of the Fourteenth Amendment." (*Rogers* v. *Richmond*, 365 U.S. 534, 5 L. ed. 2d 760, 769.

CONCLUSION.

For all of the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

JULIUS LUCIUS ECHELES,
Attorney for Petitioner.

APPENDIX A

OPINION OF THE SUPREME COURT

The People of the State of Illinois, Defendant in Error v. Edward Speice, Plaintiff in Error, 23 Ill. 2d 40.

Mr. JUSTICE KLINGBIEL delivered the opinion of the court:

Following a conviction of the crime of burglary in the criminal court of Cook County the defendant, Edward Speice, sued out a writ of error from this court to review the judgment of conviction. On this writ of error the defendant contends that his motion to suppress certain evidence should have been allowed, that the trial court erred in failing to hold a hearing outside the presence of the jury to determine the voluntary character of a confession, that the trial court improperly limited the defendant's right to cross-examine a prosecution witness, and that evidence of another crime was introduced against the defendant.

At the hearing on the motion to suppress the defendant testified that at about midnight on the night in question he was arrested as he parked his car in front of his home. He asked the officers whether they had a warrant and they said they did not need one. He told the officers that if they had a warrant they could search his house but if they had no warrant they could not. The defendant testified that in spite of his objection the officers took him into his house at gun point and proceeded to search the house against his wishes. The defendant testified that he lived in the apartment with his wife, his son and his sister-in-law. A police officer testified that he received an anonymous telephone call from a woman who said, "You wish to get two guys with some hot property? Well, there are two fellows who took

in some property at 2453 West Berteau earlier this evening." After the call the witness and two other officers went to that address at about 11:20 p.m. The witness rang the bell and Mrs. Speice opened the door and asked the officers to come in. The witness asked Mrs. Speice if her husband had brought in any property earlier that evening and she said that he had and asked if the officers would like to see the property. They went into a bedroom where Mrs. Speice stated the property had been brought by her husband earlier that evening and the witness saw three portable piano-organs, a portable television set, a brown attache case and an electric welding outfit. According to this witness Mrs. Speice told him that she had had an argument earlier that evening about bringing the property into the apartment and that she had told him to get the stuff out of the apartment immediately because she didn't want to get involved with the police. The witness further testified that after this search he and the other officers left the house and parked their car a short distance away to await the return of the defendant. At about 2:00 a.m. they saw the defendant drive up to his house and the officers placed him under arrest. They then went to the apartment and asked the defendant where the articles were that had been brought in that night and the defendant pointed to the bedroom where the officers had previously found the property. The witness testified that defendant objected to them removing a fan since he claimed that he paid for it and it wasn't "hot." Mrs. Speice testified in rebuttal that when the officers first came to the apartment they asked if the defendant was there. When she replied that he was not they asked if they could come in and she said that they could. According to Mrs. Speice the officers left without making a search. She denied taking the officers to a bedroom and pointing out the merchandise and denied that she told the officers that she was angry at her husband for bringing in stolen merchandise.

The defendant contends that the property discovered as a result of this search was improperly admitted in evidence. Two alternative contentions are advanced. First it is argued that even if Mrs. Speice did freely consent to a search of the premises, her consent was insufficient to waive the constitutional right of her husband to be free from an illegal search of his property. In our opinion this contention can not be sustained in view of our holdings in *People* v. *Shambley*, 4 Ill. 2d 38 and *People* v. *Perroni*, 14 Ill. 2d 581. In both of these cases the evidence showed that the premises were jointly owned by the husband and wife and we held that the consent of the wife to a search of the premises was sufficient to waive the husband's constitutional immunity. In *Shambley* we said, 4 Ill. 2d 38, 42, "the rule seems to be well established that where two persons have equal rights to the use or occupation of premises, either may give consent to a search and the evidence thus disclosed can be used against either." This language was cited with approval in the *Perroni case*. In the present case the defendant's motion to suppress alleged that the premises were occupied by defendant and his wife and this allegation was supported by defendant's own testimony at the hearing on the motion. We are of the opinion that the joint occupancy of the apartment by the defendant and his wife is sufficient to bring this case within the rule set forth in *Shambley* and *Perroni*. Therefore, if the defendant's wife freely consented to a search of the premises, the consent was sufficient to waive the defendant's immunity.

The second alternative argued by the defendant in support of his contention that the search was illegal is that the consent of the wife was not freely given but was the result of an implied coercion on the part of the police officers. In support of this contention the defendant relies strongly upon *Amos* v. *United States*, 255 U.S. 313, 65 L. ed. 654, and *People* v. *Lind*, 370 Ill. 131. In these cases it was held

that the circumstances showed that the consent of the wife was not freely given but was the result of implied coercion brought about by the presence of the police officers. In both of these cases there was a conflict in the testimony as to whether the wife in fact consented. The defendant points out that there is such a conflict in the present case and argues that because of this conflict in the testimony this case should be covered by *Lind* and *Amos* rather than *Shambley* and *Perroni*, for in the latter cases there was no conflict in the testimony as to the consent. This argument would have the effect of taking from the trial judge the right to pass upon the credibility of the testimony and would require us to hold that in the event of a conflict in the testimony as to whether consent was given we must decide that the consent was not freely given. Such a contention is similar to that advanced by the defendant in *People* v. *Byrd*, 21 Ill. 2d 114 where it was argued that if there be any evidence that a confession is involuntary, the confession must not be admitted in evidence. We rejected that contention in the case and we reject defendant's contention herein. The question of whether consent was in fact given is a factual matter to be determined by the trial court and where the evidence is conflicting this court will accept the finding of the trial court unless it is clearly unreasonable. (*People* v. *Peterson*, 17 Ill. 2d 513.) In the present case the trial judge made an express finding that he did not believe Mrs. Speice's testimony except insofar as it was corroborated by other witnesses. In view of the express finding by the trial judge, we are of the opinion that the evidence at the hearing was sufficient to show that the wife's consent was freely given. The trial court properly denied the motion to suppress.

Defendant's contention that the trial court erred in failing to hold a hearing to determine the voluntary nature of an alleged confession is based upon the following facts: A

police officer testified that when the defendant was questioned following his arrest he was asked where he got the articles which were found in the apartment and the defendant replied that he obtained them from a fellow at Western and Irving Park Boulevard. He was asked whether he knew that they were stolen and the defendant replied that he knew they were stolen because he had got them from a thief. Defendant's counsel objected to all of the foregoing testimony on the ground that no proper foundation had been laid. The State contends that this general objection was insufficient to call for a hearing outside the presence of the jury to determine the voluntary nature of the confession. We do not find it necessary to decide that question because it is our opinion that it is clear that the statement made by the defendant was not a confession. The defendant was charged with the crime of burglary. His statement that he obtained the articles from a thief is more in the nature of an exculpatory statement. It might be an admission that defendant was guilty of the crime of receiving stolen property but it was inconsistent with his guilt of the crime of burglary. A trial court is required to hold a hearing only in the case where the defendant's statement amounts to a confession, and where the statement is a mere admission or an exculpatory statement no preliminary hearing is required. *People* v. *Stanton*, 16 Ill. 2d 459.

The defendant's third contention is that the trial court improperly restricted the defendant's cross-examination of a prosecution witness. After the police officer had testified on direct examination that the defendant had stated that he knew the articles were stolen because he got them from a thief, defendant's counsel on cross-examination asked the officer whether the defendant had ever told him that he did not know that the articles were stolen. The officer replied that defendant never made such a statement. Defense counsel then questioned the officer about a written statement

which was made by the defendant in the presence of the officer. The officer testified that the defendant did sign a written statement. When defense counsel inquired of the officer whether in that written statement the defendant denied knowledge that the goods were stolen, the prosecutor objected and the trial court sustained the objection, apparently on the ground that it was not proper impeachment. Further efforts by defense counsel to read from the written statement were prevented by the trial court. On further cross-examination of this witness he was again asked whether the defendant denied knowledge that the articles were stolen. The officer replied, "Not at that time." He was then asked whether the defendant made such a denial at another time and the officer replied that the defendant had denied such knowledge when the written statement was taken. The court sustained objections to questions asking whether or not this testimony of the officer was contradictory to his former testimony. We are of the opinion that the trial court should have permitted defense counsel to attempt to impeach the officer by reading from the written statement made by the defendant, for the fact that the defendant in his written statement denied knowledge that the articles were stolen was in conflict with the officer's testimony that the defendant never denied such knowledge. However, the cross-examination ultimately developed the fact that the defendant denied such knowledge in his written statement and since this fact was brought out by cross-examination, we are of the opinion that the defendant was not prejudiced by the refusal of the trial judge to permit inquiries as to the contents of the written statement. The objections to questions as to whether the witness had contradicted himself were properly sustained since the questions were argumentative and invaded the province of the jury.

This leaves for consideration the contention that the trial court erred in permitting evidence of another crime. This contention is based upon the fact that the officers testified that they found some welding equipment in the defendant's apartment. The indictment charged the burglary of a store and the theft of three piano-organs and a television set and defendant contends that reference to the welding equipment constituted evidence of another crime, which was prejudicial to the defendant. It was necessary for the officers to relate the circumstances of the search and the reference to the welding equipment, along with the articles which were taken in the burglary for which defendant was on trial, was not prejudicial error. Cf. *People* v. *Tomaszewski*, 406 Ill. 346.

The judgment of the criminal court of Cook County is affirmed.

Judgment affirmed.

APPENDIX B

Constitutional provisions involved.

The Fourth Amendment to the United States Constitution provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Section 1 of the Fourteenth Amendment to the United States Constitution provides in pertinent part:

> ". . . no state shall . . . deprive any person of life, liberty or property without due process of law; . . ."

Section 6, Article 2, Constitution of the State of Illinois, 1870, follows the Fourth Amendment almost identically and is as follows:

> "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizure, shall not be violated; and no warrant shall issue without probable cause, supported by affidavit, particularly describing the place to be searched, and the persons or things to be seized."

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1961.

NO. 612.

EDWARD SPEICE,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

(ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.)

BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI.

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Printed by Authority of the State of Illinois

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(ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.)

BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI.

THE QUESTIONS PRESENTED.

The questions presented are two:

1. WAS THERE SUFFICIENT EVIDENCE IN THE REPORT TO SUPPORT THE TRIAL COURT'S FINDING THAT PETITIONER'S WIFE CONSENTED TO THE SEARCH OF THE HOME JOINTLY OCCUPIED BY THEM AS HUSBAND AND WIFE, WAS NOT ONLY VOLUNTARILY BUT WILLINGLY GIVEN?

2. IF THE ANSWER TO THIS QUESTION IS "YES" DOES ILLINOIS' RULE THAT A WIFE MAY VOLUNTARILY AUTHORIZE THE SEARCH OF HER AND HER HUSBAND'S HOME AND CONSENT TO THE SEIZURE OF STOLEN PROPERTY, DENY DUE PROCESS WHERE THE WIFE'S CONSENT IS NOT ONLY VOLUNTARILY BUT WILLINGLY GIVEN?

RESPONDENT'S ADDITIONAL STATEMENT OF THE CASE.

Petitioner's Statement of the case (*Petition for certiorari*, pp. 5-7) omits all mention of the evidence upon which the trial court admitted and the Supreme Court of Illinois sustained the trial court's admission of the property, all of which was admittedly stolen, upon which evidence petitioner's conviction rests.

Indeed, since petitioner's Statement of the Case so seriously suppresses and distorts the evidence as virtually to falsify the record, in this case, one of the grounds upon which Illinois opposes the grant of *certiorari* is that, absent some considerations of National moment and import that transcend the interests in this case, *certiorari* should be denied if for no other reason than that writ should not ordinarily be granted upon a false petition.

In Illinois the stenographic transcript of the record on appeal or writ of error is abstracted by counsel for the appellant or plaintiff in error. The abstract will ordinarily be deemed correct unless the appellee or the defendant in error corrects it by "an additional" or "supplemental" abstract.

Petitioner's counsel thus abstracted the testimony of John Willems, a police officer of the City of Chicago, upon whose testimony the trial court admitted the stolen property as lawfully seized and hence competent evidence of petitioner's guilt:

"JOHN WILLEMS, on behalf of the State, testified:

"That he was at detective headquarters, 1211 South State Street and received an anonymous telephone call from a woman who stated, 'you wish to get two guys with some hot property? . . . Well, there are two fellows who took in some property at 2453 West Berteau earlier that evening'. One she knew as Eddie Speice, and the other as Red. She said 'if you want to get these guys, you had better get over here real fast'. She also described the car in which they were riding, a 1950 or '51 grey Plymouth Sedan. After the call he and officers Blanchard and Rothgery went to 2453 Berteau at about 11:20 P. M. He rang the bell and heard a woman's voice say, 'Who is it?' He stated it was the police and she opened the door. He had a conversation with Mrs. Speice at the doorway.

"He asked if her husband was home and she said he was not, but expected him. **She asked the officers to come in and not to stand in the hallway. He asked her if her husband had brought in any property earlier and she said he had and asked if the officers would like to see the property. They went to a bedroom and Mrs. Speice stated that the property was brought in by her husband and Red at about 10:30 that evening.** He saw three portable piano-organs, a portable television set, a brown attache case and an electric welding outfit. **Over objections, the court permitted the witness to testify that Mrs. Speice stated she had an argument earlier that evening about her husband bringing the property into the apartment. Over objections, the officer was permitted to say, 'during the course of the argument, it was brought to light that Edward Speice told her that the stuff was stolen and that he would get the stuff out of the apartment'. Over objections, the officers stated she further said to get the stuff out of the apartment immediately because she doesn't want to get involved with the police and lose her child.**

(Petitioner's counsel objected to all matters which occurred after the entry into the house.)

"The officer further stated he asked Mrs. Speice to describe the vehicle and she stated it was a 1940 or '50 grey Plymouth sedan with a damaged right fender. The officer stated that Mrs. Speice said her husband was coming with more articles within an hour. They then left the house and parked their car a half block west of the residence. At about 2:10 A. M. they saw a 1951 grey Plymouth sedan preparing to park on Berteau. The officers drove up to the car, announced they were police, and told both men they were under arrest. When he first saw the petitioner, Speice was preparing to get out of the automobile. Speice and Kotwasinski were handcuffed and the officer told them they were going to Speice's apartment. They then took Speice and Red to the apartment. The officers advised Mrs. Speice that they had her husband under arrest. They asked Speice where the articles were that they had brought into the apartment and Speice pointed to a bedroom, which was the same bedroom that the officers had been in previously. Officers Rothgery and Blanchard brought articles into the living room.

"Over the objections on the ground that anything subsequent to the entry into the house was immaterial for the purposes of the motion to suppress, the court permitted the officer to state that Speice said, 'Don't take that fan. That don't belong with that stuff. I paid for that stuff. That isn't hot.'

Cross-Examination.

"The officer stated that when he received the phone call the woman refused to identify herself. During all the time the woman was talking with the officer, he did not suggest to any other officer that the call should be traced. After they left Speice's house they waited for approximately two hours for the car described to

drive up to the house. The officer did not remember whether he found any goods on the person of Speice.

"Whereupon, the State rested.

To be sure, petitioner's wife, Patty Lou Speice, categorically denied this conversation, (Abst. 7) and adhered to her denial on cross-examination. (Abst. 7-8.).

Petitioner's Statement of the Case also omits the testimony of Officer Rothgery, which petitioner's counsel thus abstracted in the Supreme Court of Illinois.

"OFFICER ROTHGERY testified for the State:

"That he talked with Mrs. Speice in the corridor of the courtroom prior to the hearing. She told the officer her lawyer advised her to come down so that the divorce papers would be signed by her husband."

ARGUMENT.

I.

THERE WAS EVIDENCE TO SUPPORT THE FINDINGS OF THE TRIAL COURT AND OF THE SUPREME COURT OF ILLINOIS THAT PETITIONERS' WIFE'S CONSENT WAS NOT ONLY VOLUNTARILY BUT WILLINGLY GIVEN.

If the trial court was justified in believing the testimony of two police officers of the City of Chicago, this case, unlike *Amos v. United States*, 255 U. S. 315, is not a case in which coercion may be inferred as a matter of fact or implied as a matter of law from the fact that a woman "consents" to a search by law-enforcing officers of premises occupied jointly by her and her husband as the matrimonial domicile.

In evidence wholly suppressed from the petition for *certiorari* in this case, petitioner's wife "asked the officers to come in and not stand in the hallway." She was asked "If her husband had brought in any property earlier" and she said "He had" and asked *if the officers would like to see the property.*

Unlike a wife who desires but does not have the legal knowledge or moral courage necessary to protect her husband, petitioner's wife *volunteered* that she and her husband had an argument earlier that evening about her husband bringing the property into the apartment and volunteered "he told her that the stuff was stolen and that he would get the stuff out of the apartment." "She had told him to get the stuff out of the apartment." Moreover, on the day of the trial, Mrs. Speice came to the courthouse and told "the officer her lawyer advised her to come down so that the divorce papers would be signed by her husband."

Since the trial court believed this version of the matter, this is not the case of a frightened wife who "consents" in form only to what would otherwise be an unlawful search of her house.

This consent was given by a woman who wanted to get the stuff out of the apartment and get petitioner out of there, too.

In fact, she wanted to divorce and apparently did divorce petitioner shortly after and on account of his stealing and storing property in their joint home.

II:

THE EXTENT TO WHICH A WIFE MAY CONSENT TO AND THEREBY BIND HER HUSBAND BUT FOR HER CONSENT WOULD BE AN UNLAWFUL SEARCH UNDER THE FOURTH AND FOURTEENTH AMENDMENTS IS A MATTER OF ILLINOIS MATRIMONIAL LAW, NOT OF FEDERAL CONSTITUTIONAL LAW.

Wolf v. *Colorado*, U. S. ....., strongly intimated and *Matt* v. *Ohio*, 367 U. S. 643, has now squarely held that a State's use of incriminating evidence that has been seized under circumstances that would have violated the Fourth Amendment had the officers seizing the property been Federal officers, denies due process of law.

We do not ask reconsideration of that recent case; for the concurring and dissenting opinions show that the important question resolved in the *Matt* case has already had primary consideration by all of the members of this court.

But the question of the extent to which a wife (or a husband traditionally the *pater familias*) may bind the other spouse to what would otherwise be a trespass, an illegal

search of premises and seizure of property, even a felonious burglary, is, we submit, still a matter of matrimonial law and thereof of State law, not Federal constitutional law.

Most states do not have the "civil" or "modern Roman" law of "community property." But many States do have such a law.

The extent to which one spouse may bind the other to a debt, a contract or other obligation without the consent of the other spouse, varies from State to State.

> The literal text of the Fourth Amendment confirms the "right of the people to be secure in *their* persons, houses, papers, and effects, against unreasonable searches and seizures." (Emphasis supplied.)

But the extent to which property owned during the continuance of a marriage is wholly that of the husband (as was the case with all property at common law that was not secured to the wife by a trust with some person other than the husband as trustee), is wholly that of the wife (as is still the case in nearly all States in property settled upon the wife by a trust of which the husband is not the sole trustee), or is their joint property, either because the State has chosen to adopt some form of "the law of community property" or for some other reason, and the extent to which the matrimonial relationship confers upon one spouse to waive the property rights of another spouse is, we submit, a matter of the State law of matrimony and property.

Doubtless a rule that sanctioned the search of the premises, the seizure of property and the use of that property as evidence against a "consent" that was in fact coerced or extorted would deny due process.

But where the State holds that a wife who is intent on getting rid of stolen property and getting rid of the hus-

band who stole it may consent to what otherwise would have been an unlawful search of the premises and seizure of the property, no Federal constitutional question is raised.

III.

ABSENT SOME QUESTION OF NATIONAL IMPORTANCE, THIS PETITION SHOULD BE DENIED BECAUSE PETITIONER'S STATEMENT OF FACTS VIRTUALLY FALSIFIES THE RECORD IN THIS CASE.

If this court really believes that this case presents some Federal constitutional question of National moment that should be settled and yet is not likely to come before it for some time, it should utilize its jurisdiction to resolve that question despite the considerations urged under this Point.

But if the court agrees with us that the specific facts of this case do not fairly present a question of National import, then even if this court would otherwise grant its writ of *certiorari*, it should withhold that writ from the petitioner who, not proceeding in *forma pauperis*, but represented by counsel of his own choice, presents a petition that does not even hint at, much less summarize the substance of the only evidence in the record upon which this court's extraordinary and discretionary writ is sought.

CONCLUSION.

For reasons urged in this brief in opposition to the petition for *certiorari*, the Attorney General of Illinois submits that *certiorari* should be denied.

Respectfully submitted,

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Office-Supreme Court, U.S.
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THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

REPLY OF PETITIONER TO RESPONDENT'S BRIEF

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REPLY OF PETITIONER TO RESPONDENT'S BRIEF

The respondent would have this court avoid deciding the important issue here by resorting to a specious argument that the court should not consider the question, because petitioner suppressed, distorted, and falsified the record. (Respondent's Brief, p. 2).

We respectfully ask the court to compare our statement of facts in connection with the testimony of police officer John Willett as set out on pages 6 and 7 of our petition

with the testimony as set out by the respondent on pages 3 and 4 of its brief. A comparison will show that all essential facts necessary for a consideration of the legal question is included in the statement of facts as presented by the petitioner.

May the State sanction a midnight invasion of a citizen's dwelling place, absent that citizen's invitation, where the police officers testified that the wife invited them to come into the apartment out of the hallway, and where the wife denied she made such invitation? Even if such invitation by the wife were given, under the circumstances, is not such "invitation" the result of that degree of implied coercion held to be violative of the Fourth Amendment to the Constitution in Amos v. United States, 255 U.S. 313 and therefore condemned?

In its brief, the State contends that the testimony of the wife in denying that she gave the police confronting her at midnight permission to enter the apartment and denied that she gave them permission to search the apartment must be ignored. The State argues that so long as the trial court believed the officers and not the wife that, therefore, consent must have been freely given as testified to by the officers.

But such an argument flies in the face of common experience and ordinary reason.

Would the officers really go away upon not receiving an "invitation" to enter the home because they had no search warrant? The time was near midnight. The woman was alone in her apartment with her child. She was nervous, upset and crying (even the officers testified to this) upon the officers' confronting her. Her husband, the petitioner, was not home.

It is the State's contention that when there is a conflict of testimony between the officers who state that invitation was given and the wife who testified that invitation was not given, that the trial court's ruling forecloses any appellate review. We respectfully submit that, under the circumstances, this court may review the finding of the trial court.

Assuming a wife grants consent to officers, under the circumstances, is not such consent impliedly coerced?

The wife was home alone with her child when officers confronted her in the hallway of her home near midnight. Petitioner's wife was upset (A. 7) and was crying (A. 8). Although she stated she gave no permission to the officers to enter (A. 8), assuming she gave permission to the officers, is any more evidence needed to demonstrate that her police-asserted "invitation" was coerced?

> "The contention that the constitutional rights of defendant were waived when his wife admitted to his home the government officers, who came, without warrant, demanding admission to make search of it under government authority cannot be entertained." *Amos v. United States*, 255 U.S. 313 at 317.

Is this not a submission to lawful authority which does not rise to the dignity of consent? 31 A.L.R. 2d 1097.

This court should grant certiorari to determine whether or not a wife may waive a husband's constitutional right by consenting to the search of his dwelling.

Even assuming that the wife freely gave her consent to search the apartment at midnight, can such consent deprive the husband of his constitutional rights? This question has never been squarely decided by this court. For *Amos* v.

United States, 255 U.S. 313, did not reach the exact point. In *Amos*, this court said, p. 317:

> "We need not consider whether it is possible for a wife, in the absence of her husband, thus to waive his constitutional rights, for it is perfectly clear, that under the implied coercion here presented, no such waiver was intended or effected."

This court should grant certiorari to decide this important constitutional question.

The "matrimonial" argument advanced by the respondent (its brief, pp. 7-9), has not too much meaning and has no application to the issues here.

CONCLUSION.

By its spurious argument, the respondent has really begged the question and has, in effect, confessed error.

This court should grant certiorari because of the importance of the questions presented and because the court should now amplify its holding in *Amos* v. *United States*, 255 U.S. 313, to determine whether a wife may waive her husband's constitutional rights.

Respectfully submitted,

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